

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRAD L. KOLLER,

Petitioner,

File No: 1:10-cv-788

v.

HON. ROBERT HOLMES BELL

CAROL HOWES,

Respondent.

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**MEMORANDUM OPINION AND ORDER ADOPTING
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This matter is before the Court on a habeas corpus petition filed pursuant to 28 U.S.C. § 2254 by Petitioner Jerrad L. Koller. On September 10, 2010, Magistrate Judge Scoville issued a Report and Recommendation (“R&R”) recommending that this Court deny the petition as time-barred. (Dkt. No. 5.) Petitioner has sent a letter to the Court which has been docketed as an Objection to the R&R. (Dkt. No. 6.) The Court is required to review *de novo* those portions of the R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. *Id.* However, “a general objection to a magistrate’s report . . . does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.” *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). In addition, pursuant to *Day v. McDonough*, 547 U.S. 198 (2006), Petitioner must be accorded fair notice that his petition may be denied as time-barred and an opportunity to present his position. 547 U.S. at 210. The R&R and Petitioner’s letter satisfy those requirements.

Petitioner does not raise any specific objections to the Magistrate Judge's R&R. Petitioner merely notes that he believes that "this Habeas Corpus filing is for[] the 6.500." (Objection 1.) A motion filed pursuant to the Michigan Court Rules, Subchapter 6.500, is a motion for post-appeal relief. It is an application for state post-conviction or collateral review. A petition for writ of habeas corpus is not an appeal of such a state proceeding; it is an independent action. As rightly noted by the Magistrate Judge, the petition for writ of habeas corpus is subject to a one-year limitations period which is tolled, but not revived, by state collateral review. (R&R 5.)

So too, Petitioner reiterates that his delay in filing was due to his lack of training in the law. (Objection 1.) As discussed in the R&R, this is not legally sufficient to warrant tolling. (R&R 6-7.)

The Court has reviewed the R&R in its entirety and concludes that the R&R correctly analyzes the issues and makes a sound recommendation. Accordingly,

IT IS HEREBY ORDERED that Petitioner's objection (Dkt. No. 6) is **OVERRULED**.

IT IS FURTHER ORDERED that the Magistrate Judge's September 10, 2010, R&R (Dkt. No. 5) is **APPROVED and ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

Dated: February 11, 2011

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE